

**STATE OF NEW YORK  
DEPARTMENT OF STATE**

**DETERMINATION**

*In the matter of the designation of “body armor retailer/salesperson” as an eligible profession for the purchase, sale, and use of body armor.*

Date of designation: July 6, 2022

Legal framework

To purchase or take possession of body armor in New York State, an individual or entity must be engaged or employed in an eligible profession.<sup>1</sup> Pursuant to Executive Law section 144-a, the Department of State (Department) has established criteria for eligible professions requiring the use of body armor, as such term is defined in subdivision 2 of section 270.20 of the Penal Law. Designation of an eligible profession must be supported by a finding that the duties of the profession may expose an individual engaged in such profession to serious physical injury that may be prevented or mitigated by the wearing of body armor, or that the duties of the profession are necessary to facilitate the lawful purchase, sale, or use of body armor.<sup>2</sup> The Department may add a profession to the list of eligible professions requiring the use of body armor.<sup>3</sup>

Findings of fact and analysis

The law implementing restrictions on the use of body armor in New York State provides the eligible profession framework for lawful use of body armor,<sup>4</sup> which is codified in part in section 270.21 of the Penal Law. Department of State regulations, under 19 NYCRR 905.3, establishes criteria for determining eligibility of a profession to purchase, sell, or use body armor, including whether “the duties of the profession are necessary to facilitate the lawful purchase, sale, or use of body armor.”

The profession of body armor retailer/salesperson is encompassed within what the 2018 federal Office of Management and Budget Standard Occupational Classification Manual refers to as a “detailed occupation,”<sup>5</sup> code 41-2031, titled “Retail Salespersons.” Within the SOC-labeled detailed occupation of “retail salespersons,” a body armor retailer/salesperson purchases and possesses body armor for the purpose of maintaining store inventory. Further, a body armor retailer/salesperson is specifically responsible for lawfully selling body armor to individuals whose

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<sup>1</sup> New York Penal Law § 270.21.

<sup>2</sup> New York Executive Law § 144-a; 19 NYCRR §§ 905.3, 905.1(c), (f).

<sup>3</sup> 19 NYCRR §§ 905.2(a), 905.5(a).

<sup>4</sup> L.2022, ch.210, as amended by L.2022, ch.371, §§ 11–13.

<sup>5</sup> The SOC occupations are organized into a tiered system with four levels, those being major groups broken into minor groups, with each minor group broken into broad occupations, followed by the highest level of specification, called detailed occupations.

professions are eligible to purchase and use body armor and is subject to civil and criminal penalty provisions set forth in General Business Law § 396-eee and Penal Law § 270.22, respectively. A body armor retailer/salesperson must meet the purchaser to accomplish the sale or delivery,<sup>6</sup> and is also responsible for ensuring sales to only those individuals and entities engaged or employed in an eligible profession.<sup>7</sup> Also encompassed within the lawful sale of body armor is compliance with all State laws, including but not limited to Article 28 of the Tax Law (Sales and Compensating use Taxes), which includes a requirement to register with the Tax Department and obtain a Certificate of Authority when making sales in New York State that are subject to sales tax. The duties of this position are thus necessary for facilitating the lawful purchase or sale of body armor.

### Determination

The information set forth above supports a determination by the Department that the duties of the profession of body armor retailer/salesperson are necessary to facilitate the lawful purchase, sale, or use of body armor.

Based on the foregoing facts and the requirements of Executive Law §144-a and 19 NYCRR Part 905, the Department has designated the profession of body armor retailer/salesperson as an eligible profession and adds such profession to the Department's list of eligible professions.

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<sup>6</sup> General Business Law § 396-eee.

<sup>7</sup> General Business Law § 396-eee; Penal Law § 270.22.